

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 45-004-13-1-5-00306-16  
45-004-16-1-5-00511-17  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-07-401-001.000-004  
**Assessment Years:** 2013 and 2016

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Nowacki contested the 2013 and 2016 assessments of his property located at 3839 W. 15<sup>th</sup> Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant lot at \$2,000 for 2013 and \$1,900 for 2016.
2. Nowacki filed Form 131 petitions with the Board for both years and elected to proceed under our small claims procedures. On July 9, 2018, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the subject property.
3. Nowacki appeared pro se. The Assessor appeared by Robert Metz and Joseph E. James, his Hearing Officers. They were all sworn as witnesses.

**RECORD**

4. The official record for this matter includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.<sup>1</sup>

**BURDEN OF PROOF**

5. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year’s

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<sup>1</sup> Neither party offered any exhibits.

assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).

6. Here, the subject property's assessments decreased from 2012 to 2013, and again from 2015 to 2016. Nowacki therefore bears the burden of proof for both 2013 and 2016.

#### SUMMARY OF CONTENTIONS

7. Nowacki's case:

- a. The county acquired the subject property in 2001. It repeatedly came up at tax sale until Nowacki purchased it from the county for \$75 in 2011. The property was clearly not worth the \$3,200 assessment the Assessor placed on it for 2011. And the Assessor reduced its assessed value down to \$1,900 over the next five years. Nowacki claims that this reduction proves the 2013 and 2016 assessments are incorrect. *Nowacki testimony.*
- b. Nowacki contends a valuation of \$900 is appropriate given the subject property's unbuildable lot; the declining condition of the neighborhood; the lack of sidewalks, streets and utilities; and the fact that it repeatedly came up at tax sale. *Nowacki testimony.*

8. The Assessor's case:

- a. The burden is on Nowacki for both years, and he presented no evidence to support a change in the subject property's assessed value for either year. The 2013 and 2016 assessments should therefore remain unchanged. *James testimony.*

#### ANALYSIS

9. Nowacki failed to make a prima facie case for reducing the subject property's 2013 or 2016 assessments. The Board reached this decision for the following reasons:
  - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
  - b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax

- value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2013 and 2016, the valuation dates were March 1, 2013 and January 1, 2016, respectively. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the subject property's 2013 and 2016 assessments should be \$900, but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
  - d. Even accepting that the subject property is an unbuildable lot in a declining neighborhood with no sidewalks, streets or utilities, Nowacki failed to use market-based evidence to develop a suggested value reflecting how those characteristics affected the value of his property. To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Eckerling*, 841 N.E.2d at 678.
  - e. Further, the Assessor's decision to decrease the subject property's assessment from its 2011 assessment of \$3,200 down to \$1,900 over the next five years does not prove that its 2013 or 2016 assessments were incorrect. As the Tax Court has explained, "each tax year—and each appeal process—stands alone." *Fisher v. Carroll Cnty. Ass'r*, 74 N.E. 3d 582 (Ind. Tax Ct. 2017). Evidence of a property's assessment in one year, therefore, has little bearing on its true tax value in another. *See, e.g., Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001); *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998).
  - f. Because Nowacki offered no probative market-based evidence to demonstrate the subject property's correct market value-in-use, he failed to make a prima facie case for a lower assessment. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the subject property's 2013 and 2016 assessments.

ISSUED: October 1, 2018

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.